



C.M.A(MD)No.83 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.02.2024

CORAM:

**THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN
and
THE HON'BLE MR JUSTICE K.K. RAMAKRISHNAN**

C.M.A(MD)No.83 of 2021

and

C.M.P(MD)No.735 of 2021

Branch Manager,
TNSTC,
Railway Station Puduroad,
Kumbakonam,
Thanjavur,
(Kumbakonam Kottam)

: Appellant/Respondent

Vs.

1.Premavathi
2.Minor.Muthulakshmi,
D/o.Kannan,
3.Minor Dharmaraj
S/o.Kannan
(Minor 2nd and 3rd respondents represented
through their mother and guardian
1st respondent Premavathi)

: Respondents/Claimants



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PRAYER: Civil Miscellaneous Appeal has been filed under Section 173 of Motor Vehicles Act, 1988 against the judgment and award passed in M.C.O.P.No.4 of 2019 on the file of the MACT (Sessions Judge Mahila Court) Pudukottai, dated 23.01.2020.

For Appellant : Mr.P.M.Vishnuvarthanan

For Respondents : No appearance

JUDGMENT

[Judgment of the Court was made by
K.K. RAMAKRISHNAN .J.]

The appellant Transport Corporation, aggrieved by the award passed by the Motor Accident Claims Tribunal (Sessions Judge Mahila Court) Pudukottai in M.C.O.P.No.4 of 2019, dated 23.01.2020, has preferred this appeal, questioning the quantum of compensation awarded by the tribunal and for not fixing the contributory negligence on the deceased.

2. The factum of the accident and the manner of accident are not in dispute.



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3. The appellant Transport Corporation is the respondent in M.C.O.P.No.4 of 2019, on the file of the Motor Accident Claims Tribunal (Sessions Judge, Mahila Court) Pudukottai. The respondents 1 to 3 are the claimants. The respondents 1 to 3 filed a claim petition in M.C.O.P.No.4 of 2019, claiming a sum of Rs.90,00,000/- (Rupees Ninety Lakhs only) as compensation for the death of one Kannan, who is the husband of the first respondent and father of the respondents 2 & 3 in the accident that occurred on 31.08.2018. By the award, dated 23.01.2020, the Tribunal awarded a sum of Rs.29,00,000/- as compensation.

4.Facts of the Case:-

According to the respondents 1 to 3, on 31.08.2018 the deceased went to Pudukkottai in his TATA Ace vehicle bearing Registration No.PY-02-J-0832 along with one Ramar Pandiyan. When they approached Pudukkottai to Thanjavur National Highway towards Karaikal at about 11.15 p.m., near Mulur Vellaikoonpatti School bridge from west to east, a Government bus bearing Registration No.TN-68-N-0821 came in the opposite direction. The driver of the Government bus driven the vehicle in a rash and negligent manner by overtaking a vehicle



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proceeding in its front, without abiding the road traffic rules dashed against the TATA Ace vehicle driven by the deceased and caused the accident. In the impact, the deceased died on the spot and the said Ramarpandian was injured. The jurisdictional police filed the First Information Report.

5.The appellant filed a counter contending that the Insurance Company of the deceased vehicle is also a necessary party to the proceedings but the claimants has not impleaded the insurance company of the vehicle and hence, this petition is bad for non-jointer of necessary parties. The accident happened because the TATA Ace had its left side headlight alone functioning. Since two vehicles are involved in this case, contributory negligence is applicable. The respondent before the Tribunal denied the age, avocation, income of the deceased. The compensation claimed by the petitioners is excessive and prayed for dismissal of the claim petition.

6. Before the Tribunal, on the side of the claimants, first claimant was examined as P.W.1 and injured Ramarpandiyan was examined as P.W.



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2, who is eye witness in this case and Ex.P1 to Ex.P14 were marked. On the side of the respondent, one Narainthiran was examined as R.W.1 and no document was examined.

7.The Tribunal relying upon the evidence of P.W.1 and P.W.2, R.W.1 and Ex.P1-FIR came to the conclusion that the driver of the respondent/appellant was responsible for the accident and awarded compensation of Rs.29,00,000/- along with interest @ 7.5% per annum. Challenging the quantum of compensation awarded by the Tribunal and the negligence, the present appeal has been filed.

8. The learned counsel appearing for the appellant/Transport Corporation would submit that the Tribunal erred in fixing the monthly income of the deceased as Rs.20,000/- merely on the basis of Ex.P11 photocopy of the RC Book and further awarded 25% for future prospects. This is against the judgment of the Apex Court reported in **2017(2) TNMAC 609 (SC) [National Insurance Co. Ltd., v. Pranay Sethi]**. He further submitted that the principle of contributory negligence should have been applied by the Tribunal and prayed for allowing the appeal.



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9. No representation for the respondents.

10. This Court considered the rival submissions made by the learned counsel for the appellant and also perused the materials available on record.

11. The point for determination is whether the award passed by the Tribunal is correct or not?

12.DISCUSSION ON NEGLIGENCE:

The injured claimant Ramar Pandiyan -PW2 took the deceased Kannan TATA Ace Vehicle bearing registration number PY 02 J 0832 on 31.08.2018 to go to Pudukkottai. When they were coming in Pudukkottai to Thanjavur national highways towards Karaikal at 11:15 pm., near Mulur Vellankoonpatti school bridge, from west to east direction, the appellant transport corporation bus bearing registration number TN 68 N 0821 driven by the RW1 in the opposite direction, without following traffic rules, overtook the vehicle proceeding in front of it in a rash and negligent manner, dashed against the said TATA Ace vehicle. In result,

6/14



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TATA Ace driver died and PW-2 sustained injuries. PW-2 deposed before the Court in cogent manner and without infirmities. The law enforcing authority also registered a case against the RW-1. The RW-1 deposed before the Court that the deceased drove his vehicle in rash and negligent manner in zigzag way and he hit the bus. Curiously, in the cross examination of PW-2, they put a suggestion that the TATA Ace vehicle was driven by the deceased with only one headlight on and therefore he without sufficient light, dashed against the bus. The suggestion is diametrically opposite to the evidence of the RW-1. Further, RW-1, to prove his case, has not produced any documents. Rough sketch also was not marked. He also admitted that criminal case is pending against him. Therefore, on principle that evidence of injured witness shall be placed on high pedestal than the other witness. The learned trial judge believed the testimony of injured witness and has held that the RW-1 drove his vehicle in a rash and negligent manner overtaking ongoing vehicle without following any traffic rules and dashed against the deceased's vehicle and caused accident. This Court, in view of the above discussion finds no error or perversity in the finding of the learned trial judge in fixing the negligence on RW-1. Hence, this Court affirms the finding of the learned



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trial Judge and finds that there is no irregularity or illegality warranting interference in the findings of the Tribunal.

13.Discussion on Quantum:

13.1.P.W.1 is the wife of the deceased. She deposed that her deceased husband was earning more than Rs.30,000/- per month. He owned TATA Ace vehicle and he usually go on hire by driving himself and he also purchased snacks items from famous Sri Harinivas Company and sold in retail and earned sufficiently. For the said sale purpose, he got GST registration number and was doing the business. To prove the same, Exhibit P-10 was marked. In Ex.P10, it is clear that deceased purchased the snacks items. He also produced the turn over for the period commencing from 01.04.2017 to 29.03.2018. In the relevant period, he was doing the business to the tune of Rs.1,28,689/-. She also produced the deceased's driving licence and RC book of the vehicle, and the income of the deceased is amply proved. There was no contra evidence. The Hon'ble Supreme Court in the case of **Chandra V. Mukesh Kumar Yadav** reported in 2022 (1) SCC 198 has held as follows:

9... the guesswork for assessing the income of



the deceased should not be totally detached from reality. Merely because the claimants were unable to produce documentary evidence to show the monthly income of Shivpal, same does not justify adoption of lowest tier of minimum wage while computing the income. There is no reason to discard the oral evidence of the wife of the deceased who has deposed that late Shivpal was earning around Rs. 15,000/- per month.

Therefore, the learned trial Judge has correctly fixed the monthly income of the deceased as Rs.20,000/-. We find that as per age of the deceased, nature of the work, the tribunal has rightly taken the monthly salary of Rs. 20,000/-.

The deceased was aged about 48.

(i)As per the 2017(2) TNMAC 609 (SC) [National Insurance Co. Ltd., v. Pranay Sethi], 25% future prospect is to be taken, which calculated as follows: 20,000/- X 25/100 = 5,000/- and hence, his total monthly income comes around Rs.25,000/-.

(ii)His early income comes around Rs.25,000 X 12 = 3,00,000/-

(iii)As per the case reported in **2009 (2) TN MAC 1 (SC) (Smt**



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the proper multiplier is 13 and proper deduction for his personal expenditure is 1/3. Hence, the loss of income is calculated as follows:

$$3,00,000 \times \frac{2}{3} \times 13 = 26,00,000/-$$

In view of the above discussion, the tribunal has correctly calculated the loss of income.

14.As per the judgment of the Hon'ble Supreme Court in the case of Pranay Sethi, the wife of the deceased would be entitled Rs.40,000/- towards consortium but the Tribunal has awarded a sum of Rs.1,20,000/- and the same is reduced to Rs.40,000/-. The Tribunal has awarded a sum of Rs.1,50,000/- for loss of love and affection and the same is reduced to Rs.80,000/-. Therefore, general damages under the conventional heads is modified as:

Loss of Consortium = Rs.40,000/-

Love and affection = Rs.80,000/-

Funeral Expenses = Rs.15,000/-

Loss of Estate = Rs.15,000/-



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In the light of the above said discussion, claimants would be entitled to claim the following amounts as compensation under the various heads enumerated hereunder:

<i>S.No.</i>	<i>Under the head</i>	<i>a)Calculation</i>	<i>b) Amount in Rupees</i>
1	Monthly income (monthly income + future prospects 10%)	Rs.20,000/- X 25/100 = 5,000/-	25,000/-
2	Deduction of 1/3 for his personal expenses	Rs.3,00,000 – Rs. 1,00,000/- =Rs.2,00,000/-	2,00,000/-
3	Annual Loss of Income	Rs.25,000 X 12 = 3,00,000/-	3,00,000/-
4	Loss of Income after applying the multiplier “14”	Rs.2,00,000 X 13 = Rs.26,00,000/-	26,00,000/-
5	<i>Compensation</i>		<i>Amount in Rupees</i>
	a) Loss of Income		26,00,000/-
	b) Loss of consortium		40,000/-
	c) Loss of Love and affection		80,000/-
	d) Funeral Expenses		15,000/-
	e) Loss of Estate		15,000/-
	<i>Total</i>		<i>27,50,000/-</i>



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15.1.The award of the Tribunal is modified as follows:

S. No.	Description	Amount awarded by Tribunal	Amount awarded by this Court	Award confirmed or modified or enhanced or granted
1	Loss of Income	Rs.26,00,000/-	Rs.26,00,000/-	Confirmed
2	Loss of consortium to the first claimant	Rs.1,20,000/-	Rs.40,000/-	Reduced
3	Loss of love and affection to the claimants 2 & 3	Rs.1,50,000/-	Rs.80,000/-	Reduced
4	For Funeral expenses	Rs.15,000/-	Rs.15,000/-	Confirmed
5	For loss of Estate	Rs.15,000/-	Rs.15,000/-	Confirmed
Total		Rs.29,00,000/-	Rs.27,50,000/-	Reduced by Rs.1,50,000/-

16.The Civil Miscellaneous Appeal is partly allowed reduced by reducing the compensation from Rs.29,00,000/- to Rs.27,50,000/- with interest at the rate of 7.5% p.a., from the date of claim petition till the date of realization. The appellant / TNSTC is directed to deposit the reduced award amount, less the amount if already deposited, within a period of eight weeks from the date of receipt of a copy of this order. The claimants are entitled to withdraw the reduced award amount along with



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proportionate accrued interest and costs, less the amount if already withdrawn, as per the apportionment and order made by the Tribunal. The Tribunal is directed to refund the excess amount, if any, to the appellant/ TNSTC along with proportionate interest. No costs. Consequently, connected miscellaneous petition is closed.

(V.B.S.J.) (K.K.R.K.J.)
26.02.2024

Index:Yes/No
Internet:Yes/No
am/sbn

To

- 1.The Motor Accident Claims Tribunal
(Special District Court)
Tiruchirappalli.
- 2.V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



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**V.BHAVANI SUBBAROYAN.J.,
and
K.K. RAMAKRISHNAN.J.,**

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